IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1229 of 2007

RAM NARAIN
V/S
GOVERDHAN SINGH & ANR.

Mr. MC BHOOT, for the appellant / petitioner

Mr. SAJJAN SINGH, for the respondent

Date of Order : 2nd May, 2007

HON'BLE SHRI N P GUPTA,J.

REPORTABLE

ORDER

The petitioner in this petition is a returned candidate, whose election has been set aside by the impugned order Ex.-9, dt. 27.1.2007.

The case of the petitioner, as pleaded in the writ petition is, that for the election of Sarpanch and Panch of the Gram Panchayat Palana, election programme was declared, and according to programme, 3.2.2005 was fixed for filing nomination form, scrutiny, and time for withdrawal of the nomination paper, and election was to be held on 4.2.2005. According to the petitioner, in all 10 nomination papers were filed for the office of Sarpanch, and out of them only 9 were found to be valid, and a list thereof was published on the notice board, and four of them presented withdrawal, which included the respondent no. 1, hereafter referred to

as the "election petitioner". The elections took place between five persons only, and the petitioner was duly elected. It is alleged, that election petitioner filed an election petition, on the ground, that he did not submit any notice for withdrawal, and signatures on the withdrawal notice are forged one, and as such the election has been materially affected. A copy of the election petition has been filed as Ex.1. The petitioner contested the election petition, contending that election petitioner himself submitted notice for withdrawal, and he has himself filed notice for withdrawal, and copy of the notice is filed as Ex.-2. Then, it is pleaded that the election petition filed by the election petitioner is not maintainable. During trial the election petitioner examined himself as A.W.1, and also examined Jai Narain A.W.2, then the petitioner examined himself as N.A.W.1, and also examined Sukhdev N.A.W.2, Kishna Ram as N.A.W.3, and Ram Chandra as N.A.W.4. Then, the case of the petitioner is, that issues framed by the learned trial court are not in accordance with law, and election petition was liable to be rejected under O. 7 Rule 11. However, the same has been accepted vide Ex.-9. It is pleaded that election has been set aside against the provisions of Article 243-O(b) of the constitution, without any authority of law. With these pleadings the impugned order has been challenged, interalia on the ground, that the election has been set aside without looking into the provisions of Rule 80 of the Rajasthan Panchayati Raj

(Election) Rules, 1994, hereafter referred to as the Rules, and without framing any issue in terms of Rule 80. The other ground taken is, that the learned trial court has not considered and referred the provisions of Rule 80 and Rule 28, and decided the matter as if it is a civil suit. Then, it is contended that the election petition does not disclose any cause of action, and in the alternative it is pleaded, that while deciding issue no. 1 the learned trial court failed to appreciate, that there is no provision where-under the Returning Officer was required to make any endorsement on the withdrawal notice, and there is no particular form of notice prescribed for withdrawal notice. All that is required is, that the person withdrawing shall give a notice to the effect, that the petitioner has proved that the notice of withdrawal Ex.-10 has been produced by the election petitioner. Then, another ground raised is that the second part of the issue no. 1, regarding material effect on the election, is, on its face, illegal, as the issue has been framed without even looking to the provisions of Rule 80, and relevant provisions of the rules. It is also contended that no material facts have been pleaded in the election petition, about material affect on the election, nor there is an iota of evidence on that point, nor is there any consideration to that effect in the judgment. Interalia with these averments the impugned order Ex. 9 is prayed to be quashed.

Election petitioner appeared as caveator, who submitted his reply on 14.3.2007, contesting the writ petition. In the reply certain preliminary objections have been raised. One of the preliminary objection raised is, that the petitioner has not tried to assail the finding of the learned Tribunal, and has mainly relied upon Rule 28 and 80 of the Rules, contending, that there is no non-compliance thereof, and in view of the fact, that the findings of the learned Tribunal have not been challenged in appropriate manner, the petitioner is not entitled to any relief. Various other preliminary objections have been raised, but they are, in substance, pleading on merits, therefore, I need not dilate much on that. Then, giving parawise reply, it was contended that it is wrong to contend that four persons had withdrawn their nominations including election petitioner, rather the election petitioner had never withdrawn the nomination paper in any manner, and that the petitioner has been illegally and unconstitutionally elected for the post of Sarpanch. It is also alleged, that since the election petitioner came to know of the episode, he immediately filed an application to the District Election Officer on 4.2.2005 itself, copy whereof has been produced as Ex.7 on the record of the learned Tribunal, and as Annexure R 1/6 in this petition. Then, it is contended that the election petitioner has proved his pleading, as well as four documents, while the petitioner has failed to prove that the petitioner had

withdrawn his candidature, rather there is apparent contradiction in the statement of petitioner, and evidence has been rightly appreciated by the learned trial court. It was denied that the election petition does not disclose any cause of action, or that it does not disclose any of the grounds specified in Rule 80, rather the issue has rightly been framed, and rightly decided. It is contended that both the parties were alive to the controversy, existing between the parties, and had gone to trial with full consciousness, and at no point of time any grievance was raised by the petitioner with regard to framing of the issue, or with regard to the election petition to be liable to be dismissed under O. 7 Rule 11. It was also alleged that from Ex.11 and 12, available on the record of the trial court, and produced collectively as Annexure R 1/7, it is clear that there has been patent non compliance of Rule 28. Then, it is pleaded that it is incorrectly alleged, that endorsement of presentation is not required on the notice of withdrawal, rather delivery thereof is very material aspect under Rule 28, and that the election petitioner has clearly proved, by proving on record of the learned trial court, the documents Ex. 11, 12, 5 and 10, and that the petitioner had never withdrawn, and that the Returning Officer proceeded in wholly illegal manner, to deprive the petitioner from availing the statutory right of contesting the election. It was denied that the election petition is lacking in any material particular, or that there is no

evidence, rather the judgment of the learned trial court is based on proper appreciation of evidence, and does not require any interference. Interalia with these pleadings, it was prayed that the writ petition be dismissed.

When the matter came up on 15.3.2007, the record of the learned trial court was ordered to be requisitioned, and the same has also been received. Thereafter the matter was heard for quite a long time.

Arguing the writ petition, the election petition was read, and it was argued, that according to election petition, the election petitioner did not withdraw, and somebody-else forged the signature, and produced it, and that, even in para-5 and 6 of the election petition, it is not pleaded that this document was not produced by the election petitioner. Then, issue no. 1 was read, and the provision of Rule 80(d) was read, and it was sought to be contended, that the learned trial court should find violation, or non-compliance of any particular rule, which is not the finding. Then, the finding of the learned trial court, regarding withdrawal notice having been published on the notice board, is sought to be assailed on the ground, that the learned trial court erred in expecting the petitioner to examine the Returning Officer, rather it is within the jurisdiction of the learned trial court itself, and rather the learned trial court is expected, to examine

the Returning Officer, by itself. Then argument in this regard was, that the learned trial court was in error in concluding non-publication of the withdrawal notice, as in that event there should have been six candidates, instead of five. Then, reading paras 18, 16 and 19 of the learned trial court it was contended, that there is no finding about the election of the petitioner having been materially affected by the alleged non compliance of any rules, as it was submitted, that if the withdrawal notice has been given, and even if there are some deficiencies here or there, it does not matter at all, rather what is required to be seen is, as to whether withdrawal notice was given or not. Then, statement of Sukhdev and Ramchander were pressed into service, by contending, that they are the eye-witness of the election petitioner personally delivering the withdrawal notice to the Returning Officer, and that, it is not relevant, as to whether the Returning Officer's signature are there or not, on the withdrawal notice. Learned counsel for the petitioner relied upon the judgment of Allahabad High Court, in Sri Ram Autar Vs. Kr. Satyabir reported in AIR 1978 Allahabad-201, and of Punjab & Haryana High Court, in Santokh Singh Vs. Mohan Singh reported in AIR 1994 P & H -258.

On the other hand, learned counsel for the election petitioner read the provisions of Rule 80, and para 6, 7 and 8 of the election petition, and pressed into

service the provisions of Rule 80(c) and (d)(iv), and contended, that it amounts to improper rejection of the election petitioner's nomination, and that, there has been patent non compliance of the provisions of Rule 28 of the Rules, and that a wholly forged document was prepared, purported to be withdrawal notice, and that was notice by somebody other than the election petitioner. This amounts to rejecting the election petitioner's nomination in the garb of withdrawal, and that withdrawal was not published on the notice board. Then, it is contended that the alleged eye witness also did not depose about election petitioner having himself produced, or presented personally, the alleged withdrawal notice. Then, regarding absence of pleading about election having been materially affected, it was pleaded, that no such objection has been raised in the reply to the election petition, nor has it been the plea that the grounds of challenge to election, as pleaded in the election petition, are not available to the election petitioner, inasmuch as the original Ex.11 and 12 are both available in the file, as were produced by obtaining certified copy, before the learned trial court. Learned counsel for the respondent placed reliance on the three judgments of Hon'ble the Supreme Court, as relied by the learned trial court in para-19 of its judgment, being that in Somnath Rath Vs. Arukh reported in AIR 1999 SC-3417, Ms. Krishna Mohini Vs. Mohinder Nath reported AIR 2000 SC-317, and Pradyut Bordoloi Vs. Swapan Roy reported in AIR 2001

SC-296.

I have considered the submissions and have gone through the record and have also gone through the judgments cited at the bar.

Before proceeding further I may gainfully reproduce the provisions of Rule 28 and Rule 80 of the Rules which reads as under:-

> "**Rule 28. Withdrawal from candidature.**-(1) Any candidate [may] withdraw his candidature by notice in writing in duplicate signed by him or bearing his thumb impression and delivered in person to the Returning officer on the date and by the hour appointed under sub-clause (c) of Clause (ii) of Sub-rule (1) of Rule 23.
>
> (2) No notice of withdrawal shall be entertained after the day and hour referred to in sub-rule (1).
>
> (3) A candidate who has withdrawn his candidature shall not be allowed to cancel the notice of withdrawal.
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> (4) The Returning Officer shall, on receiving a notice of withdrawal under Sub-rule (1), cause, as soon as may be, one copy thereof to be exhibited at some conspicuous place at the office of the Panchayat or in any conspicuous place at the headquarters of the Panchayat where no Panchayat office is established."

> "**Rule 80. Manner of challenging an election under the Act.**-An election under the Act or under the Rules may be called in question by any candidate at such election by presenting a petition to the District Judge having jurisdiction within thirty days from the date on which the result of such election is declared, on any one or more of the following grounds-

(a) that on the date of election a returned candidate was not qualified or was disqualified for such election, or

(b) that any corrupt practice was committed by a candidate or by any other person with the consent or connivance of the candidate, or

(c) that any nomination was improperly rejected, or

(d) that the result of the election in so far as it concerns the returned candidate was materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interest of the candidate by a person other than that candidate or by a person acting with the consent or connivance of such candidate, or

(iii) by improper reception, refusal or rejection of any vote or the reception of any vote which was void, or

(iv) by any non-compliance with the provisions of the Act or of these rules, or

(e) that in fact the petitioner of some other candidate received a majority of the valid votes, or

(f) that but for votes obtained by the returned candidate by corrupt practices, the petitioner or some other candidate would have obtained a majority of the valid votes."

Thus a look at the above provisions of the rules does show, that according to Rule 28(1), what is significant is, that the withdrawal notice is to be in writing, in duplicate, which is to be signed by the candidate or should bear his thumb impression, and delivered in person, to the Returning Officer on the date

and by the hour appointed under sub-clause (c) of Clause (ii) of Sub-rule (1) of Rule 23, and that, according to sub-rule (4) one copy thereof is to be exhibited at some conspicuous place at the office of the Panchayat, or in any conspicuous place at the headquarters of the Panchayat where no Panchayat Office is established. While according to Rule 80, for the present purpose, the election has been set aside on the ground mentioned in clause (c), being that any nomination was improperly rejected, so also, the clause (d)(iv), being that non-compliance with the provisions of the Act or of the rules, the result of election, in so far as it concerned the returned candidate, was materially affected.

With this I may come to the pleading of the parties. According to the pleadings of the election petition, the election petitioner never withdrew his name, nor he was to withdraw it, rather after the time of withdrawal was over he was to be allotted election symbol, by which time his physical presence was not necessary, and therefore, he left for campaigning. Then, in para-6 it is alleged, that after the time for withdrawal was over the Returning Officer published a list of contesting candidates, which did not include the name of election petitioner, despite his name having not been withdrawn, nor his having presented any withdrawal notice to the Returning Officer, nor the alleged withdrawal notice bears the

signature of the election petitioner, nor does it bear the signatures of Returning Officer. Rather all this has been alleged to have been done by the contesting candidates, or by the associates of the contesting candidates, with the conspiracy, and connivance of the Returning Officer, by forging a document, purporting to be withdrawal notice, which has been shown to be presented to the Returning Officer. It was also pleaded that the alleged withdrawal notice is, for withdrawal of the candidature from the office of Panch, and in the body thereof it has been added as withdrawing from the office of Sarpanch. Then, in para-7 it is pleaded, that on coming to know of his being illegally excluded from contesting the election, the petitioner contacted the Returning Officer, with no good. Then, on 4.2.2005 itself he submitted a complaint to the Collector, Chief Election Commissioner, Panchayati Raj Minister and Human Rights Commission, but no action was taken, and the election was got conducted, which is required to be set aside. Then, in para-8 it is pleaded, that by this fraudulent action, and conspiracy, and collusion of the candidates with the Returning Officer, the election has been materially affected, and is therefore liable to be set aside.

In the reply, while denying the pleading it was pleaded, that the notice of withdrawal submitted by the petitioner is available on the record of the Returning

Officer, and therefore, the Returning Officer did not include his name in the list of candidates. It was pleaded that the petitioner has deliberately chosen to acquire colours. It was pleaded that no candidate can go for campaigning without getting allotted the election symbol. Thus, the pleadings are ex-facie unreliable. Then, it is pleaded that the name of the election petitioner was not rightly included in the list of candidates. While replying para-6 it was pleaded, that the election petitioner himself delivered withdrawal notice, bearing his own signatures, to the Returning Officer, which is available on record, and thus, he had withdrawn from the candidature. Then, replying para-7, denying the election petitioner's pleading, it was pleaded that the pleadings have been taken to give colours to the election petition, and allegation about sending complaints on 4.2.2005, was denied for want of knowledge. Then, the pleadings contained in para-8 were also denied. Then, in additional pleas it was maintained, that the election petitioner had withdrawn his candidature, the withdrawal form is available on record, and that he did not appoint any election agent, and that all the contesting candidates have not been impleaded as party, therefore, the election petition is bad for non-joinder of parties.

Thus, the main controversy joined issue between the parties was, as to whether the election petitioner had withdrawn his candidature or not, and in this regard, as to

whether the withdrawal form is forged one, and as to whether it was presented by the election petitioner himself or not.

The learned trial court in this regard framed three issues. The first issue was as to whether as pleaded in para 5 and 6 of the election petition, the election petitioner did not withdraw his candidature nor did he deliver the withdrawal notice to the Returning Officer, and that the alleged withdrawal notice presented on behalf of election petitioner bears his forged signatures, and that the entire action has been taken fraudulently, and in collusion, and thus has materially affected the election. It appears that subsequently an additional issue was also framed on 27.7.2006, as issue no. 2-A, being, as to whether since the petitioner was not in the contesting candidates, the election has not been materially affected, and if so what is its effect on election petition.

The learned trial court deciding issue no. 1 has considered the material on record, and the evidence of the parties in a great detail, and also exercised powers under Section 73 of the Evidence Act, and it has compared the purported signatures of the election petitioner on the withdrawal form with signatures available on nomination form, which was also available on record as Ex.-1, the election petition, its affidavit etc., and found, that the

signatures appearing on the withdrawal notice are not of the election petitioner, and also found, that the withdrawal notice was not published on the notice board, as required by Rule 28(4). Likewise it was found, that the election petitioner had presented the withdrawal notice himself. Interalia with these findings the impugned judgment has been passed.

I find on record that on 21.2.2006 the election petitioner filed an application under O. 7 Rule 14 C.P.C. seeking to produce both the copies of the withdrawal notice, being certified copies. Then, I also find that on 24.7.2006 the petitioner filed an application under O. 14 Rule 5, praying for framing of additional issue, and that application was allowed as noticed above. Then, after framing of the additional issue on 27.7.2006, the petitioner sought opportunity to produce evidence to prove additional issue, which was declined by the learned trial court, against which a writ petition was filed before this Court, being Civil Writ No. 4404/2006, therein on 18.10.2006 an order was passed, directing the learned trial court to take evidence on that issue only, only of those witnesses who have already been examined. With these observations the writ petition was disposed. Purportedly making use of this order, the petitioner re-examined his witnesses N.A.W.2 Sukhdev on 14.12.2006, who has deposed about the election petitioner withdrawing candidature by

himself presenting the withdrawal notice to the Returning Officer, and to have signed it at four places in his presence. However, in cross-examination he has admitted, that he did not see the withdrawal notice fixed on the board, and that, on the notice board a list of withdrawal forms etc. were not noticed. In other words this witness has not deposed anything about the additionally framed issue being issue no. 2A, and since this Court had expressly directed the learned trial court to take evidence on newly framed issue only, and that also of only those witnesses who had already been examined. In that view of the matter, to say the least, the subsequent statement of Sukhdev, N.A.W.2, recorded on 14.12.2006, is simply required to be excluded from consideration.

Before proceeding further I feel constrained to observe, that as appears from the record, including pleading, evidence, and the statements made before the learned trial court, that the parties had gone to trial ad idem to the effect, that the election is challenged on the ground that the election petitioner did not withdraw from the candidature, the purported withdrawal forms were forged, and were not produced by the election petitioner, while on the other hand, the election was sought to be defended on the ground, that the election petitioner himself had presented the withdrawal notice. And thus the only controversy was as to whether the election petitioner

had not withdrawn his candidature or had withdrawn it. All other grounds, and aspects, have been raised only before this Court. Be that as it may.

Now before proceeding further to discuss the evidence of the parties, and material on record, I may better discuss and consider the judgments cited at the Bar.

Sri Ram Autar's case was cited for the purpose of contending, that in order to succeed in election petition, the election petitioner is required to establish, as a fact, that election of the returned candidate was materially affected by non-compliance with the provisions of Act, and burden to prove this is on the election petitioner. As an abstract legal proposition there is no dispute. However, on facts a look at the judgment shows, that in that case two candidates filed their nomination, purporting to be the candidates of Janata Party, and one candidate could not seek authorisation from the party, while the other could. Accordingly the person who could seek authorisation in time was allotted the party symbol of Haldhar in circle, while the other candidate was allotted the symbol of the horse and a rider. However, at a later stage Returning Officer altered the symbol vise versa, and on that ground the election was challenged by the losing candidate, and in that context the above dictum was laid down. Obviously the case is clearly distinguishable on

facts.

Likewise, Santokh Singh's case was again a case, where Returning Officer declined to receive/accept the request for withdrawal of the candidature, and it was found, that the Returning Officer was in error in declining to accept the withdrawal of the candidate, and in that background it was found, that in cases covered by clauses (a) to (c) of section 100(1) of the Representation of Peoples Act, the election can be declared void without anything more. However, in the cases covered by sub-clause (d) it is not only necessary to prove one or more of the grounds mentioned in clauses (i) to (iv), but also, that in so far as the returned candidate is concerned, the result has been materially affected. In that case the election petitioner being runner up, claimed, that due to improper acceptance of nomination of candidate, the result of the election was material affected, in that, in case nomination of the candidate in question was not accepted, the votes polled in his favour would have been polled in his favour, and he would have been elected, which plea was not accepted, as basis of the plea of petitioner was a mere surmises. In my view this judgment was rather a converse case, and is distinguishable on facts.

As against this Somnath Rath's case was a case where the nomination of the candidate was rejected on the

ground, that he was having certain work under some of public distribution system. It was found by the Returning Officer to be a disqualification, and finding it to be covered by Section 100(1)(c), which is pari-materia with Rule 80(1)(c) of the Rules, it was found, on merits that nomination was wrongly rejected, and it was held, that since the case is covered by Section 100(1)(c), improper rejection of nomination paper, by itself, and without anything more, is sufficient ground to declare the result of the election of returned candidate to be void.

Krishna Mohini's case again was a case, where it was found, that the Returning Officer was not right in rejecting the nomination papers. This finding recorded by the designated election officer was upheld by the Hon'ble the Supreme Court. Then it was held, that illegal rejection of nomination, is by itself a ground for setting aside an election, without further proof of the result of the election of the returned candidate having been materially affected, and for this purpose earlier judgment in Hira Singh Pal Vs. Madan Lal reported in AIR 1968 SC-1179 was relied upon.

In Pradyut Bordoloi's case also the candidate was clerk in Coal India Ltd., and holding it to be an office of profit under Government in one of the establishment wherein the Government had not less than 25% shares, his

candidature was rejected. It was found to be improper on merits, and on that ground alone the election was set aside.

It was contended by the learned counsel for the petitioner, that the cases cited by the learned counsel for the election petitioner are cases where nomination had been rejected, which was found to be illegal, while in the present case the nomination had not been rejected, and therefore, the case does not fall under Rule 80(1)(c), and as the nomination was accepted, the case could possibly fall only in clause (d)(iv), for which the election petitioner is to plead and prove, that the result, in so far as it concerned the returned candidate, has been materially affected, and therefore, these judgments do not help the election petitioner.

In my view a proper comprehension of the provisions of Rule 80 would show, that it catalogues the grounds on which the election can be set aside, and this does include ground (c), that any nomination was improperly rejected, and also ground (d)(iv), about there being non compliance of the provisions of the Act, and the Rules, in which event the result of the election should have been materially affected. It is significant to note, that the ground of improper acceptance of any nomination is a ground covered by Clause (d)(i), and not by other independent clause. However, the ground of corrupt practice is covered

at two places, being ground (b) and ground (d)(ii) as well, and the distinction is, that for ground (b) mere committing of corrupt practice by a candidate or by any other person with his consent or connivance, is enough by itself, as a ground to set aside the election, while for clause (d)(ii) the requirement is, that corrupt practice must have been committed in the interest of the candidate by a person other than candidate, or by person acting with the consent, or connivance of such candidate, and in this event, for making out a ground, the result should have been materially affected. This does show, that wrong inclusion of nomination has been made a ground to set aside the election with a condition that it should have materially affected the result of the returned candidate, while improper exclusion of candidature has been made ground by itself, without anything more, by providing under Rule 80(c). True it is, that the words used in Rule 80(c) are, nomination being improperly rejected, and these words, in my view, are required to be interpreted to mean, improper exclusion of any candidate from contesting the election, which obviously would include, improper rejection at the stage of scrutiny, or otherwise excluding his candidature from contesting the election, if improperly excluded. Taking any other view would be preposterous, inasmuch as may be that an impostor may submit a forged withdrawal nomination, and the Returning Officer even, scrupulously complying with the provisions of the Rules, may purportedly exclude the

candidature, on the ground of candidate having withdrawn, and in that event, it cannot be said that the matter would not fall within Rule 80(c). The specie covered by Rule 80 (d)(iv), regarding non compliance of the provisions of the Act or the Rules cover a different field of operation. May be that in the present case that ground may have been additionally available, or may have been claimed to be available by the election petitioner, as the Returning Officer did not endorse the presentation on the withdrawal notice, or did not publish it on the notice board, or the like, but then exclusion of the candidature improperly, obviously if it is proved by the election petitioner, that his candidature was improperly excluded, would in my view, without anything more, furnish a ground to set aside the election under Rule 80(c).

In this view of the matter, now I may proceed to examine the material on record, to find out, as to whether it is established, that the withdrawal notice was given by the election petitioner, bearing his signatures, or is a forged document, somehow made to travel to the Returning Officer.

In this regard a look at the finding of the learned trial court shows, that the learned trial court in para-8 onwards has discussed the evidence of the parties in detail, and in para-12 has given reasons to disbelieve the

evidence led on the side of the present petitioner, individually one by one, and has found, that from the evidence led on the side of the present petitioner it is not established that the forms Ex.11 and 12 bear the signature of the election petitioner, and that he presented these forms to the Returning Officer. Likewise in para-14 the learned trial court has exercised powers under Section 73 of the Evidence Act, and has compared purported signatures of the election petitioner on Ex. 11, 12 and 5, with the admitted signatures available on record, being on nomination paper, and on the statements given in the Court, so also the affidavit, and has found the signatures purporting to be of the election petitioner, are not put by him.

Though this being a writ of certiorari, it is not required for me to re-appreciate the evidence for examining the finding of fact, recorded by the learned trial court: However, erring in favour of the present petitioner Ram Narain, and even ignoring the bounds of limited scope of my jurisdiction under Article 226, I venture to even re-appreciate the evidence of the parties.

The election petitioner Goverdhan Singh has filed an affidavit by way of his examination in chief, and in para-5 he has deposed that on 3.2.2005 he did not withdraw his candidature for the post of Sarpanch of the Gram

Panchayat Palana, and then again in para-8 he has deposed that he neither withdrew his candidature, nor presented any such withdrawal notice to the Returning Officer. Then, in para-11 he has deposed that Ex. 5 bears his forged signatures, shown to have been produced before the Returning Officer. On this affidavit he was cross-examined on 1.7.2005, and therein he has maintained that he was there upto 2 P.M., and had left thereafter, as the Returning Officer informed, that at the time of allotment of symbols his presence is not necessary. Then, he has deposed that Shankerlal and Madanlal are his brothers in relationship. Then, he has denied the suggestion about his having given the withdrawal notice Ex.5, and has also denied signatures 'A' to 'B' thereon. He has denied to have presented Ex.5 in duplicate, and one copy thereof having been pasted on notice board. Then, on 27.4.2007 his further statements were recorded, wherein he has further deposed that he obtained the copy Ex.-5, purporting to be notice of withdrawal, and it does not bear his signatures, and that when he sought information from the District Election Officer, it was found, that both the copies of the notices were available on the file, being Ex.11 and 12 which did not bear his signatures. Then, in cross-examination he has deposed to be not knowing as to whether the notice of the withdrawal is to be given to the Returning Officer or not. He has denied the suggestion about his having filled two forms for withdrawal of the candidature, rather he has

maintained that he has never submitted any form for withdrawal of the candidature. Then, he has denied Ex. 11 and 12 to be bearing his signatures. Then, coming to A.W.2 Jai Narain; he has deposed, that at about 2.30 in the noon, the election petitioner came to him, and at his request he accompanied the election petitioner for campaigning, and that election petitioner was with him since then upto 7 P.M. In cross examination this witness has admitted to be a distant relation of the election petitioner. However, notwithstanding this, the withdrawal notices, and signatures of the election petitioner thereon, have not been put to this witness. In other words, the evidence about the withdrawal notice being not bearing his signatures have not been satisfactorily discredited in cross-examination of these witnesses.

Then, I come to the evidence led on the side of the petitioner. N.A.W. 1 Ram Narain, petitioner, has deposed that at about 1.45, he had asked the election petitioner, as to whether he would contest the election or withdraw nomination? Whereupon the election petitioner showed the two withdrawal forms to him, and told, that he is withdrawing the candidature, and has then deposed, that the names of the persons withdrawing the candidature were placed on the notice board, which included the name of the election petitioner. Then, in cross-examination he has deposed to have seen the list of the contesting candidates

at 3 P.M. He has deposed ignorance about election petitioner having left for Bikaner at 2 P.M. Then, he was pointedly put, that the withdrawal forms were not filled by the election petitioner, and did not bear his signatures, which suggestion was of course denied. Then, he has admitted that when the withdrawal notice was delivered to the Returning Officer, he was not there, rather he was at a distance of 10-20 ft. Then, he has denied the suggestion about the withdrawal notice having not been pasted on the notice board. He has also deposed ignorance as to when the election petitioner left after the withdrawal. He has also admitted that he does not know the signatures of the election petitioner. Then he was pointedly put, that the forged withdrawal form has been made to travel the Returning Officer expecting the looming large success of the election petitioner, which suggestion of course has been denied. Then, he has admitted that withdrawal form was not filled by the election petitioner in his presence, but when he met election petitioner was holding the withdrawal notice. At this place it is significant to note, that all this story deposed by this N.A.W. 1 has not been put to the election petitioner, about having any dialogue, or being available there holding the withdrawal notice etc., so also about the withdrawal notice having been delivered at the time when the present petitioner was available at a distance of 10-20 ft. Then, comes the evidence of N.A.W. 2 Sukhdev. He has also deposed that out of nine candidates

four had withdrawn, which included the election petitioner, and the withdrawal notices were placed on the notice board, and that it was so pasted on notice board between 1.30 to 2 P.M., and the withdrawal notice of the other three candidates were placed on notice board after 2 P.M. In cross examination he has deposed, that Goverdhan Singh was there on the Tea Stall at about 3 P.M. Then, he has admitted that Goverdhan Singh did not fill nomination in his presence, and that he does not know the signatures of Goverdhan, and is not clear as to whether the notice of withdrawal was pasted on the notice board and the list of candidates who had withdrawn. It is a different story that he neither proves the withdrawal notice, nor deposes it to have been delivered in his presence to the Returning Officer. This is again a different story, that according to him the withdrawal notice was pasted on the notice board between 1.30 to 2 P.M., while according to N.A.W.1 it was at 1.45 P.M. that he had a dialogue with the election petitioner. Be that as it may. Then, coming to the evidence of N.A.W.3 Kishna Ram; he has deposed that Goverdhan Singh and Ramnarain did not come to him in election campaign, nor did he go with anybody for campaigning. It may be observed here, that it was not put to election petitioner in the cross examination, that he did not approach Kishna Ram, or that Kishna Ram did not go with him for campaigning. That apart in cross-examination he has deposed to be knowing Goverdhan Singh very well, being neighbour, however, he has

not deposed anything about withdrawal notice. Then, comes the evidence of Ram Chander N.A.W.4, he was also one of the candidates who had filled nomination, and had withdrawn from the candidature. He has deposed, that he along with election petitioner, Sri Kishan, and Kana Ram had withdrawn their candidature, and the proforma of withdrawal notice were given to the Returning Officer, which were like Ex. 11 and 12. In cross-examination this witness has deposed, about having submitted withdrawal notice at 1.45 P.M., and that Goverdhan Singh was with him since morning upto 4 P.M. at the place of election, and has also deposed to be having good personal relationship with Goverdhan Singh, and has also admitted to be not acquainted with the signatures of Goverdhan Singh, and that he had not seen Goverdhan Singh putting signatures on the withdrawal notice. However, he voluntarily deposed to have himself seen him delivering withdrawal notice to the Returning Officer. Then, he was put the signatures 'A' to 'B' on Ex.5, whereupon he has deposed to be not knowing, as to whether they are the signature of Goverdhan Singh or not. This witness Ram Chander claimed to be eye-witness, but then, this again has not been put to Goverdhan Singh, that withdrawal notice was presented by him in presence of, or along with, this witness Ram Chander. This is the whole evidence led on the side of the respondent. So far as the further statement of Sukhdev, recorded on 14.12.2006 are concerned, it has already been observed above, that this having been recorded

beyond the directions of this Court, given in the order dt. 18.10.2006, passed in Civil Writ Petition No. 4404/2006, these statements cannot be read.

Thus a discussion of the aforesaid evidence of the parties does show, that there is not even an iota of evidence, to prove the alleged withdrawal notice to be bearing the signatures of the election petitioner, as nobody has identified his signatures, or proved it, rather all the witnesses concerned have categorically deposed to be not knowing the signatures of Goverdhan Singh. Then, other aspect of the matter is, that the evidence led on the side of the present petitioner about delivery of withdrawal notice to the Returning Officer also does not inspire confidence, and cannot be believed, for variety of reasons, mainly including, that this has not been put to the election petitioner, that he had a dialogue with Ram Narain, or that it was delivered at the time when Ram Narain was available at the distance of 10-20 ft., or that it was delivered in presence and/or along with Ram Chander. This, in conjunction with the fact, that election petitioner has categorically denied the withdrawal notice Ex. 5, 11 and 12 to be bearing his signatures, and has categorically maintained that his signatures are forged one. In that view of the matter, it cannot be said, that the learned trial court was in error in recording the findings in this regard as recorded.

Over, and above all this, for my satisfaction, I have again examined the signatures, purportedly of Goverdhan Singh, available on Ex. 11, 12 and 5, and have compared them, with admitted signatures available on Ex.1 the nomination form, apart from other admitted signatures available, and find, that the signatures appearing on Ex. 5, 11 and 12 are radically different, as compared to signatures on Ex.1 being in the signature on the withdrawal form. Specially the first letter "गो", so also "र्ध", and "सिं ह". Not only this rather every character of the writing constituting signatures in the two sets of signatures, one being on Ex.1, and the other being on Ex. 5, 11 and 12, do not at all bear any resemblance whatever, rather it clearly demonstrates a very crude attempt of forging the signatures of the election petitioner on Ex. 5, 11 and 12. Consequently I do not find any ground to interfere with this finding as well, as recorded by the learned trial court.

In view of the above, the only conclusion deducible is, that it is not established, that the withdrawal notice was given by the election petitioner, so also about it bearing his signatures, rather it clearly appears to be crude forgery, obviously somehow made to

travel to Returning Officer.

The result of the aforesaid discussion is, that I do not find any force in this writ petition, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/